

REMARKSAcknowledgement of Receipt

Applicant appreciates the Examiner's acknowledgement of its timely filed response submitted to the USPTO on January 6, 2009.

Status of the Claims

Applicant appreciates the Examiner's acknowledgement that claims 1-12, 37-50, 52-57, 59 and 60 are currently pending examination for patentability. Herein, Applicant amends claims 1, 12 and 37 without prejudice or disclaimer of the subject matter thereof.

Rejection of Claims 1-4, 6, 8, 12, 37, 38, 40, 41, 43, 45 and 49 under 35 U.S.C. 102(b)

The Examiner has maintained a rejection of claims 1-4, 6, 8, 12, 37, 38, 40, 41, 43, 45 and 49 under 35 U.S.C. 102(b) as being anticipated by Casswall et al. (Bovine Anti-Helicobacter pylori Antibodies for Oral Immunotherapy, Published 2002) as evidenced by Hemling (Iodine in Milk, Published 10/18/2001) and Dial et al. (Antibiotics Properties of Bovine Lactoferrin on Helicobacter pylori, Published 1998).

As Applicant has previously stated, in order for an Examiner to establish a proper rejection under 102(b), the Examiner must show that each and every one of the claim limitations was suggested or taught by the prior art being relied upon. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Additionally, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Applicant again respectfully submits that the Examiner has not overcome this burden. As set

forth in the record, Caswell et al. describes a method of using an immunoglobulin containing colostrum product from cows hyperimmunized with *H. pylori* to inhibit *H. pylori* adherence to gastric mucosa and to Lewis blood group antigens. As also set forth in the record, Hemling discloses that milk may contain low levels of iodine and Dial et al. discloses that lactoferrin is present in colostrum and may have antibiotic properties against *H. pylori*. None of the cited references teach a composition including N-acetyl cysteine and an antibacterial component isolated from hyperimmune colostrum or hyperimmune milk as in amended claims 1 and 37.

Additionally, with rare exception, only one reference should be utilized in making an anticipatory rejection under 35 U.S.C. 102. Rare exceptions include the instance where an additional reference is utilized to prove the primary reference contains an enabling disclosure, to explain the meaning of a term utilized in a primary reference or to show that a characteristic not disclosed in the primary reference is inherent.

In view of the current amendments to both independent claims 1 and 37, in which the claims are directed to administration of a composition including both N-acetyl cysteine and an antibacterial component, none of the cited references teach each and every element of the claimed invention, as required to make a proper rejection under U.S.C. 102(b). The additional references also do not prove the primary reference contains an enabling disclosure, explain the meaning of a term or prove that a characteristic in the primary reference is inherent.

In view of the foregoing, Applicant respectfully requests withdrawal of the Examiner's rejection of claims 1-4, 6, 8, 12, 37, 38, 40, 41, 43, 45 and 49 under 35 U.S.C. 102(b).

Rejection of Claims 5, 7, 9, 10, 11, 39, 42, 46, 47, 48, 51, 54, 55, 56 and 57 under 35 U.S.C. 103(a)

The Examiner has maintained the rejections of record against dependent claims 5, 7, 9, 10, 11, 39, 42, 46, 47, 48, 51, 54, 55, 56 and 57 under 35 U.S.C. 103(a) as being unpatentable over

Casswall et al. (Bovine Anti-helicobacter pylori Antibodies for Oral Immunotherapy, Published 2002) in view of Bruggraber et al. (U.S. Patent Application 2003/0180381 A1, Published 09/25/2003) and as evidenced by Dial et al. (Antibiotic Properties of Bovine Lactoferrin on Helicobacter pylori, Published 1998).

Applicant again respectfully asserts that in order for an Examiner to establish a prima facie case of obviousness, the Examiner must show that each and every one of the claim limitations was suggested or taught by the prior art being relied upon. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Additionally, “[a] words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). When an independent claim is deemed nonobvious under 35 U.S.C. 103, then all claims depending therefrom are nonobvious as well. *In re Fine*, 837 F.2d 1071, 5 USPQ 2d 1596 (Fed. Cir. 1988).

Additionally, Applicant again asserts that to support an obviousness rejection, MPEP §2143.03 requires, “all words of a claim to be considered” and MPEP §2141.02 requires consideration of both the, “invention and the prior art reference as a whole.” The Board of Patent Appeal and Interferences also recently confirmed that a proper, post-KSR obviousness determination still requires the Office to make a, “searching comparison of the claimed invention – including all its limitations – with the teachings of the prior art.” *In re Wada and Murphy*, Appeal 2007-3733, citing *In re Ochiai* 71 F.3d 1565, 1572 (Fed. Cir. 1995) and *CFMT v. Yieldup Intern. Corp.* 349 F.3d 1333, 1342 (Fed. Cir. 2003). As such, it is a well-settled principal in the law that an obviousness rejection requires the Examiner to address all elements in a rejected claim.

Applicant respectfully submits again that all of the rejected claims are dependent claims and that a prima facie case of obviousness has not been made by the Examiner for any of the independent claims from which all rejected claims depend. As such, the Examiner has not overcome the burden as required for him to make an obviousness rejection as the cited references do not alone or in combination teach each and every element of the claimed invention as the claim elements of

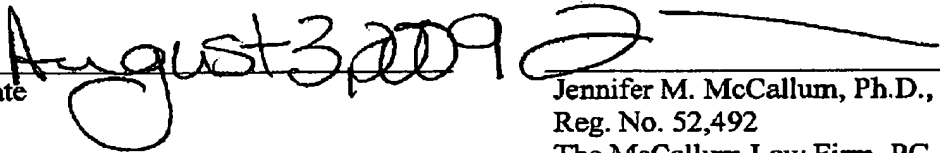
independent claims 1 and 37 have not been addressed.

In view of the foregoing, Applicant respectfully requests withdrawal of the Examiner's rejection of claims 5, 7, 9, 10, 11, 39, 42, 46, 47, 48, 51, 54, 55, 56, 57 and 58 under 35 U.S.C. 103(a).

Concluding Comments

In view of the foregoing, Applicant respectfully submits that all claims are in condition for allowance. In the event the Examiner has any questions regarding the Applicant's position, a telephone call to the undersigned representative is requested.

Respectfully submitted,

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